

QUESTIONS PRESENTED FOR REVIEW

Whether the Illinois Supreme Court's ruling that the Sixth Amendment right to a jury drawn from a fair cross-section of the community does not extend to the use of peremptory challenges is in complete accord with Lockhart v. McCree.

Whether since petitioner's race is completely irrelevant to his fair-cross section claim, no benefit would result from this Court considering his claim together with that of appellant Teague's.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DANIEL HOLLAND,

Petitioner,

vs.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO THE
PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF ILLINOIS

JURISDICTION

Petitioner seeks to invoke the jurisdiction of the
Court pursuant to 28 U.S.C. sec. 1257(3).

STATEMENT OF THE CASE

Petitioner, a white male, was charged with the aggravated kidnapping, rape, deviate sexual assault and armed robbery of Susan Bougearel, a teenager stranded on the road with her boyfriend due to car trouble. Jury selection for petitioner's trial was made from a venire of approximately 40 persons. (R. 586-587) The State exercised 12 peremptory challenges, excluding 10 white and two black prospective jurors. (R. 523,531,565,615,632,677,683,706,718) No blacks served on defendant's jury. The jury returned verdicts finding defendant guilty of all charges. Defendant was sentenced to concurrent extended terms of 60 years on the charges of rape and deviate sexual assault, and 30 years on the charge of aggravated kidnapping and 25 years for armed robbery, to run consecutive to the other sentences imposed.

Defendant appealed to the Illinois appellate court, which reversed his convictions and remanded to the trial court on the basis that petitioner's confession to the crimes was improperly introduced at trial. (People v. Daniel Holland, 147 Ill. App. 3d 323, 340, 509 N.E.2d 1230 (1986)). After accepting the cause for review on appeal by the State, the Illinois Supreme Court reversed the judgement of the appellate court and affirmed the trial court, holding that the statement was properly admitted. (People v. Daniel Holland, 121 Ill. 2d 136, 151-157, 520 N.E.2d 210 (1987)). The Illinois Supreme Court refused to address petitioner's claim, raised by him for the first time on appeal that the State's use of peremptory challenges to exclude two black jurors violated the rule in Batson v. Kentucky, 476 U.S.79, 90 L.Ed.2d 69, 106 S. Ct. 1712 (1986). The Supreme Court of Illinois found that petitioner, a Caucasian, had no standing to

assert a Batson violation. (121 Ill. 2d at 157) The Illinois Supreme Court, relying on its own prior holdings, further rejected petitioner's argument that the State's use of two peremptory challenges violated his sixth amendment right to trial by a jury drawn from a fair cross-section of the community. (121 Ill. 2d at 158)

Petitioner filed a petition for rehearing in the Illinois Supreme Court, which was denied.

REASONS FOR DENYING THE WRIT

I.

THE ILLINOIS SUPREME COURT'S RULING THAT THE SIXTH AMENDMENT RIGHT TO A JURY DRAWN FROM A FAIR CROSS-SECTION OF THE COMMUNITY DOES NOT EXTEND TO THE USE OF PEREMPTORY CHALLENGES IS IN COMPLETE ACCORD WITH LOCKHART V. MCCREE.

Petitioner asks that a writ of certiorari issue so that this Court may consider, together with Teague v. Lane, No. 87-5259, the question of whether the fair cross-section requirement of the Sixth Amendment bars the prosecution from using peremptory challenges by excusing black jurors due to race. Counsel for the State of Illinois urge this Court to deny the writ because the Illinois Supreme Court's ruling refusing to extend the fair cross-section requirement to the State's use of two peremptory challenges is in complete accordance with Lockhart v. McCree, 476 U.S. 162, 90 L.Ed. 137, 106 S. Ct. 1758 (1986).

In Lockhart, in reversing the Eighth Circuit's ruling that "death qualification" of the jury violated McCree's sixth amendment right to a jury drawn from a representative cross-section of the community, this Court noted: "We have never invoked the fair cross-section principle to invalidate the use of either for cause or peremptory challenges to prospective jurors, or to require petit juries, as opposed to jury panels or venires, to reflect the composition of the community at large." 476 U.S. at 173. This Court specifically cited to its opinion in Batson v. Kentucky, 476 U.S. 79, 90 L.Ed.2d 69, 106 S. Ct. 1712, 1717, n. 6, (1986), where it observed that the limited scope of the fair

cross-section requirement is a direct and inevitable consequence of the practical impossibility of providing each criminal defendant with a truly "representative" petit jury. Id. at 174. This Court went on to express its reluctance to extend the fair cross-section requirement to petit jurors.

Thus, it is clear that the Illinois Supreme Court's ruling refusing to extend the fair cross-section requirement to the State's alleged discriminatory use of two peremptory challenges is in full accordance with this Court's rulings. The Illinois Supreme Court's ruling is also supported by the majority of the circuits of the Federal Court of Appeal that have considered the issue. See, Teague v. Lane, 820 F.2d 832 (7th Cir. 1987), appeal pending, No. 87-5259; United States v. Thompson, 730 F.2d 82, 85 (8th Cir. 1984), cert. denied 469 U.S. 1024; Prejean v. Blackburn, 743 F.2d 1091, 1103-1104 (5th Cir. 1984); United States v. Witfield, 715 F.2d 145, 146-47 (4th Cir. 1983); Weathersby v. Morris, F.2d 1493, 1497 (9th Cir. 1983), cert. denied 464 U.S. 1046. Cf. Willis v. Zant, 720 F.2d 1212, 1219, 1219 n. 14 (11th Cir. 1983), cert. denied 467 U.S. 1256. Therefore, petitioner's writ should be denied.

II.

SINCE PETITIONER'S RACE IS COMPLETELY IRRELEVANT TO HIS FAIR-CROSS SECTION CLAIM, NO BENEFIT WOULD RESULT FROM THIS COURT CONSIDERING HIS CLAIM TOGETHER WITH THAT OF APPELLANT TEAGUE'S.

Petitioner contends that because he is white and appellant Teague is black, this Court should issue a writ of certiorari so that it might consider his fair cross-section claim together with that of appellant Teague's. The People maintain that it would be a waste of this Court's resources to grant the writ since the theory of petitioner's claim, just as that of appellant Teague's, is such that petitioner's race is completely immaterial. Further, even if this Court were to break with established precedent and find that the Sixth Amendment guarantee to a jury drawn from a representative cross-section of the community applies to the State's use of its peremptory challenges, no violation could be shown in this case, where the State used only two peremptory challenges to excuse black prospective jurors and 10 challenges to excuse whites. Thus, the writ should be denied.

Petitioner urges, exactly as does appellant Teague, that this Court extend a defendant's sixth amendment right to a jury drawn from a representative cross-section of the community to the State's alleged discriminatory use of its peremptory challenges. Obviously, the Sixth Amendment applies equally to all persons regardless of their race and the State has not contended otherwise. Thus, the fact the petitioner is white while appellant Teague is black is immaterial to the Court's

resolution of this issue, and it would be a waste of this Court's resources to grant petitioner's writ, which is solely based on this issue, merely because he is white.

Further, even if this Court were to break with past precedent and extend the Sixth Amendment right to a jury drawn from a fair cross-section of the community to the selection of the petit jury, petitioner Holland would still not be entitled to relief since he could not show that the State's use of its peremptory challenges violated that requirement where prosecutors used only two peremptory challenges to exclude blacks, while using 10 to exclude prospective white jurors.

In conclusion, it would be a waste of this Court's resources to grant petitioner's writ since his claim is identical to that being considered by this Court in Teague v. Lane, No. 87-5259, and his race is immaterial to the resolution of the issue raised. Further, even if this Court were to adopt the new rule urged by petitioner and appellant Teague, petitioner would not qualify for relief since prosecutors used only two challenges to excuse prospective black jurors. Therefore, the writ should be denied.

CONCLUSION

The People of the State of Illinois respectfully request that this Honorable Court deny the Petition for a Writ of Certiorari.

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